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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/565,205	01/20/2006	Uri Armin	1454VASUS	9521
David Klein 7590 Dekel Patent Beit HaRof'im 18 Menuha Venahala Street Room 27 Rehovot, 76209 ISRAEL			EXAMINER SCHILLINGER, ANN M	
			ART UNIT 3774	PAPER NUMBER
			MAIL DATE 02/11/2008	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/565,205

**Applicant(s)**

ARNIN ET AL.

**Examiner**

Ann Schillinger

**Art Unit**

3774

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 19 November 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SE/US)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 5, 8-10, 12, 14, and 16 are rejected under 35 U.S.C. 102(b) as being unpatentable over Kuslich (U.S. Pat. No. 5,059,193). Kuslich discloses the following: an elastomeric sheath (12) with uniform, axially varying folds surrounding an outside portion of a flexible rod (16), a portion of said sheath being arranged for sliding along said rod; and a sheath compactor (18) adapted to slide a portion of said sheath along said rod from a first position to a second position, wherein in the first position said sheath is in a non-expanded orientation and in the second position said sheath is in an expanded orientation wherein folds of said sheath expand radially from said outside portion of said rod (see Figures 1-2B; col. 3, line 60 through col. 4, line 56). Kuslich also discloses a fastening ring (23) and an anchor (36).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kuslich. Kuslich discloses the claimed invention except for the rod and the fastening ring being removable. It

would have been obvious to one having ordinary skill in the art at the time the invention was made to make the fastening ring and the rod removable, since it has been held that constructing a formerly integral structure in various elements involves only routine skill in the art. *Nerwin v. Erlichman*, 168 USPQ 177, 179.

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kuslich in view of Scholten et al. (U.S. Pat. No. 4,969,888). Kuslich discloses the claimed invention except for a rod with a removable portion. Scholten et al. teaches Surgical protocol for fixation of osteoporotic bone with a rod (30) with a removable portion (71) that allows various materials to be inserted into the intervertebral space without making additional incisions that will increase the chance of infection (col. 2, lines 11-20). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use a rod with a removable portion that will allow several different materials to be inserted into the patient through one opening.

Claims 6, 11, and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kuslich in view of Yuan et al. (U.S. Pub. No. 2005/0143818). Kuslich discloses the claimed invention except for the various shapes of parts of the claimed invention. Yuan et al. teaches tools and methods of replacing spinal joints that states that different sizes and shapes may be used in paragraph 0150 in order to properly fit a patient's anatomy. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use different sizes and shapes in the device for purpose of properly fitting a particular patient.

Claims 7 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kuslich in view of Foley et al. (U.S. Pat. No. 6,676,665). Kuslich discloses the claimed invention except for the rod being made of a shape memory material. Foley et al. in col. 9, lines 30-40, teaches

spinal instrumentation with its parts made of a shape memory alloy so that if the rod's shape is deformed when it is being used, it will return to its original shape and be available for use again. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use a shape memory material when constructing the rod so that the instrument will maintain its original shape.

Claims 15 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kuslich in view of Cragg (U.S. Pub. No. 2002/0016583). Kuslich discloses the claimed invention except for the use of a guide wire. Cragg teaches tools and methods for procedure in the spine that utilize a guide wire with a stopper end in paragraphs 0113, 0191, and 0213 in order to direct the sheath to its proper position. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use a guide wire for the purpose of direct the sheath to its proper position.

#### ***Response to Arguments***

Applicant's arguments with respect to claims 1-17 have been considered but are moot in view of the new ground(s) of rejection.

#### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ANN SCHILLINGER whose telephone number is (571)272-6652. The examiner can normally be reached on Mon. thru Fri. 9 a.m. to 4 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott can be reached on (571) 272-4754. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Ann Schillinger  
January 30, 2008

/Corrine M McDermott/  
Corrine McDermott  
Supervisory Patent Examiner, Art Unit 3738